

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHEILA LYNN-McCOWIN and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 00-1396; Submitted on the Record;  
Issued April 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 23, 1998.

On May 14, 1996 appellant, then a 37-year-old clerk, filed a claim for an occupational disease for burning, numbness and pain in her neck and her left hand and arm. The Office accepted that she sustained cervical radiculopathy as a result of her employment and paid her compensation for temporary total disability from August 12, 1996, when she stopped work, until she returned to limited duty on October 7, 1996. Appellant returned to her regular duties on December 9, 1996.

On September 22, 1997 appellant, then working as a window clerk, filed a claim for an injury to her neck, shoulder, arm and head sustained on that date when a bundle of flats fell onto the back of her head. The Office accepted that she sustained a head contusion and a neck strain. Appellant received continuation of pay from September 23 to November 6, 1997, after which the Office began paying her compensation for temporary total disability.

On June 9, 1998 the Office issued a notice of proposed termination of compensation on the basis that appellant's injury-related disability had ceased. By decision dated July 23, 1998, the Office terminated her compensation effective that date on the basis that her injury-related disability had ceased. By letter dated September 23, 1998, appellant requested reconsideration and submitted additional medical evidence. By decision dated November 9, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision. By letter dated April 6, 1999, appellant requested reconsideration and submitted additional medical evidence. By decision dated June 2, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

without establishing that the disability has ceased or that it is no longer related to the employment.<sup>1</sup>

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation, as there is an unresolved conflict of medical opinion in this case.

As the basis for its termination of appellant's compensation, the Office relied on two reports from Dr. Gregory S. Gallick, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation. The Office found that these reports constituted the weight of the medical evidence. In a report dated December 23, 1997, Dr. Gallick concluded:

"My impression of [appellant] is she allegedly suffered a cervical strain with some questionable left upper extremity radiculopathy as a result of an accident she was involved in at work on September 22, 1997. Her x-rays are normal, her MRI [magnetic resonance imaging] [scan] has been interpreted as normal, she has an EMG [electromyogram] that shows very mild cervical radiculopathy which I could not even state is related to the accident of September 22, 1997 considering that she had a preexisting problem dating back to the early 1980s and then again in 1996.

"Considering that [appellant] has absolutely no objective findings to corroborate her subjective complaints, I do not feel that she is in need of any additional treatment of these regions. I feel that she has reached her status quo ante. I feel that [appellant] has gained her maximum medical benefits of treatment at this time and I see no reason why she cannot resume full normal working activities as of December 24, 1997 without restrictions."

In a supplemental report dated May 5, 1998, Dr. Gallick stated that it was possible that appellant's September 22, 1997 employment injury aggravated her preexisting cervical radiculopathy, "but at the time of the evaluation in my office on December 23, 1997, that cervical radiculopathy had resolved and ceased giving her any discomfort or functional impairment."

While the reports from Dr. Gallick indicate that appellant's disability and need for treatment related to her September 22, 1997 employment injury had ceased, reports from appellant's attending physicians support continuing disability and need for treatment related to this injury. In a report dated January 15, 1998, Dr. Raymond P. Russomanno, an internist, stated that appellant "showed a poor response to therapy" for her September 22, 1997 injury, which he accurately described and which he treated beginning the date of the injury. He concluded that appellant's history, her type of injury and new findings on a recent electromyogram done on November 20, 1997 led him "to the conclusive diagnosis of acute exacerbation of a long-standing cervical radiculopathy with new acute denervation at the C6-7 region...."

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<sup>1</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Dr. Russomanno stated that appellant was slowly improving but was still unable to perform her prior work duties “due to recurrent pain radicular in nature.”

In a report dated February 10, 1998, Dr. Nazar H. Haidri, a Board-certified neurologist, stated that his examination of appellant showed 4½/5 strength in the left upper extremity, painful and limited neck movements and “spasm over both cervical paravertebral muscles, left more than right.” He diagnosed post-traumatic headaches, chronic cervical sprain and symptoms consistent with left cervical radiculopathy.<sup>2</sup> Dr. Haidri referred appellant for further treatment and advised her not to return to work for four weeks.

The reports of the Office’s referral physician and appellant’s physicians conflict on the question of whether appellant continued to be disabled by residuals of her September 22, 1997 employment injury. Dr. Gallick, the Office’s referral physician, concluded that appellant had no objective findings to corroborate her subjective complaints when he examined her on December 24, 1997, but Dr. Haidri reported reduced left arm strength and spasm of the cervical paravertebral muscles when he examined her on February 10, 1998. In his May 5, 1998 report, Dr. Gallick concluded that appellant’s cervical radiculopathy had resolved, but a February 24, 1998 EMG and nerve conduction velocity study, which apparently was not submitted to Dr. Gallick for his review, was interpreted to be compatible with C5-6 radiculopathy. Due to this conflict of medical opinion, the Office has not met its burden of proof to terminate appellant’s compensation.

The decision of the Office of Workers’ Compensation Programs dated June 2, 1999 is reversed.

Dated, Washington, DC  
April 17, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> In a later report, dated August 20, 1998, Dr. Haidri concluded that these conditions were related to appellant’s September 22, 1997 employment injury.